

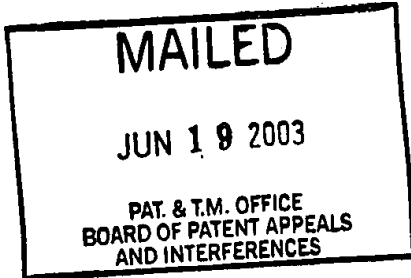
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte PAUL E. MCKENNEY

Application No. 09/127,085

ORDER RETURNING UNDOCKETED APPEAL



This application was received at the Board of Patent Appeals and Interferences on June 9, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith returned to the examiner. The matters requiring attention prior to docketing are identified below.

On December 16, 2002, appellant submitted an Amended Appeal Brief (Paper No. 12).

37 CFR § 1.192(c)(9) (2002) requires that the Appendix to the Appeal Brief contain a correct copy of the claims involved in the appeal. The Appendix to the Amended Appeal Brief filed December 16, 2002 (Paper No. 12) is deficient because it incorporates changes to claims 2-6 which were made by the

amendment filed September 6, 2001 (Paper No. 6). As noted by the Advisory Action mailed November 21, 2001 (Paper No. 7), "[t]he proposed amendment(s) will not be entered because: they raise new issues that would require further consideration and/or search . . . [and] they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal." Correction is required.

Section 1208 of the Manual of Patent Examining Procedure (MPEP) (Eighth Edition, August 2001) states:

APPEAL CONFERENCE

An appeal conference is mandatory in all cases in which an acceptable brief (MPEP § 1206) has been filed. . . .

. . . .

. . . If the examiner's answer does not contain the appropriate indication that an appeal conference has been held (i.e., including the names of the conferees and identifying themselves as the conferees along with their initials), the Board should return the application directly to the appropriate Technology Center (TC) Director for corrective action. . . . This procedure applies to all examiner's answers received by the Board on or after November 1, 2000.

The Examiner's Answer mailed March 11, 2003 (Paper No. 13) is deficient in that there is no evidence that an appeals conference has been held.

Application 09/127,085

Accordingly, it is

ORDERED that the application is returned to the
examiner:

1. for notification to appellant to submit a corrected Appendix to the Amended Appeal Brief filed December 16, 2002 (Paper No. 12) to replace the existing defective Appendix, or for the examiner to issue a Supplemental Examiner's Answer which contains a correct copy of claims 2-6;
2. for taking corrective action regarding the appeals conference; and
3. for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

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